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ADOPTED
METROPOLITAN COUNCIL

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Casmy Cash
COUNCIL ADMINISTRATOR TREASURER

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ORDINANCE 16611

AMENDING AND REENACTING TITLE 12, CHAPTER 9 OF THE CODE OF ORDINANCES OF THE CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE RELATIVE TO THE PROHIBITION OF SMOKING OF CIGARS, CIGARETTES, PIPES, OR ANY OTHER LIGHTED OR HEATED TOBACCO OR PLANT PRODUCT INTENDED FOR INHALATION, INCLUDING HOOKAHS AND MARIJUANA, WHETHER NATURAL OR SYNTHETIC, IN ANY MANNER OR IN ANY FORM, AND THE USE OF ELECTRONIC SMOKING DEVICES IN PUBLIC AND ENCLOSED PLACES WITHIN THE CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE, TO PROVIDE FOR PENALTIES AND REMEDIES; AND OTHERWISE TO PROVIDE WITH RESPECT THERETO.

NOW THEREFORE the Metropolitan Council of the City of Baton Rouge and Parish of East Baton Rouge finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

BE IT HEREBY ORDAINED by the Metropolitan Council of the City of Baton Rouge and Parish of East Baton Rouge that:

Section 1. The Code of Ordinances of the City of Baton Rouge and Parish of East Baton Rouge is hereby amended as follows:

"CHAPTER 9. - CLEAN AIR ACT

Sec. 12:600. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar means an area the primary purpose of which is the selling and/or serving of alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food, if served at all, is only incidental to the consumption of such beverages. For purposes of this article, a bar located within a restaurant is considered a restaurant.

Business establishment means any sole proprietorship, partnership, association, joint venture, corporation or other entity formed for profit-making purposes, including professional corporations and other entities where legal, medical, dental, engineering, architectural, financial, counseling, and other professional or consumer services are provided.

Cigar bar means a bar, as defined in this section, legally in operation, that generated twenty (20%) percent or more of its total annual gross income from the on-site sale of cigars and the rental of humidors, not including sales from vending machines, for the calendar year ending December 31, 2016, if the Cigar bar is then operating, and every year thereafter. If the Cigar bar is not operating as of December 31, 2016, a Cigar bar will have six months from the date it opens to establish that twenty percent (20%) or more of its total annual gross income is from the on-site sale of cigars and the rental of humidors, not including sales from vending machines.

Electronic Smoking Device means any product containing or delivering nicotine or any other substance intended for human consumption through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

Electronic smoking device business means a business establishment in which the primary activity is the sale, manufacture, or promotion of electronic smoking device products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

Employee means any person who is employed by any employer in return for the payment of direct or indirect monetary wages or profits, or any person who volunteers his services to such employer for nonmonetary compensation.

Employer means a person or business establishment that employs the services of one or more employees.

Enclosed area means all space between a floor and a ceiling that is bounded on more than two sides by solid walls. A solid wall extends from the floor to the ceiling, and may include windows and doorways. For purposes of this ordinance, a solid wall includes a retractable divider, garage door, or other solid physical barrier whether open or closed. A solid wall does not include a security barrier or retractable security door that is closed only when the business is closed for security purposes.

Gaming facility means any institution in which gaming operations are permitted to occur upon a riverboat, at the land-based casino, at a facility licensed for the operation of electronic video draw poker devices, at an eligible facility licensed for the operation of slot machines, by a licensed charitable organization, or at a pari-mutuel wagering facility or off-track wagering facility which is

licensed for operation and regulated under the provisions of Chapters 4 and 11 of Title 4 and Chapters 4, 5, 7 and 8 of Title 27 of the Louisiana Revised Statutes of 1950, or any other gaming operations authorized by law.

Group home means a residential facility that provides room and board and may include habilitation services and supervision in a family setting for people with a disability (as "disability" is defined by the Federal Fair Housing Act and the Americans with Disabilities Act).

Health care facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. Unless otherwise stated in this chapter, this definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Hookah means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

Hookah bar means a bar, as defined in this section, legally in operation that generated at least twenty (20%) percent or more of its total annual gross income from on-site retail sales of shisha for consumption in hookahs and the sale of accessories used for smoking shisha for the calendar year ending December 31, 2016, if then in operation, and every year thereafter. If the Hookah bar is not in operation on December 31, 2016, it will have six months from the date it opens to establish that at least twenty percent (20%) of its total annual gross income is from the on-site retail sales of shisha for consumption in hookahs and the sale of accessories used for smoking shisha.

Limousine has the same meaning as provided in section 10:201 of the Code of Ordinances.

Motor vehicle means a vehicle which is self-propelled and is used for the purpose of carrying passengers and/or goods on the roads and highways or waterways.

Nonprofit entity means any corporation, unincorporated association or other association or other entity created for charitable, philanthropic, educational, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organizations and not to secure private financial gain. A public agency is not a nonprofit entity within the meaning of this subdivision.

Place of employment means any area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas,

employee lounges and restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, temporary offices (such as trailers), and hallways. A private residence is not a place of employment within the meaning of this chapter unless a child care, adult day care, group home, or health care facility is operated therein or unless it is a common area of a multi-unit dwelling. A motor vehicle is not a place of employment within the meaning of this chapter unless it is operated for the public transportation of children or as part of health care, group home, or day care transportation.

Private club means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

Public place means any area to which the public is invited or permitted, including, but not limited to bars; banks; bingo facilities; convention centers; educational facilities; gaming facilities; elevators; health care facilities; hotel and motel lobbies, common areas, and all rooms; nursing homes or multi-unit residential facilities; motion picture theaters, concert halls, auditoriums and buildings primarily used for or designed for exhibiting movies, stage, drama or musical recitals, dance, lecture or other performance; libraries, museums, and galleries; public restrooms; public transportation vehicles and facilities; retail stores (other than retail tobacco stores); restaurants; shopping malls; property owned, occupied, or operated by the city-parish or an agency thereof; reception areas; restaurants; retail stores; theaters; sports arenas and waiting rooms. A private residence is not a public place within the meaning of this chapter unless a group home, child care, adult day care, or health care facility is operated therein or unless it is a common area of a multi-unit dwelling.

Public property means any vehicle, building or other location or site within the City of Baton Rouge and Parish of East Baton Rouge, excluding the cities of Baker, Zachary, and Central, owned, leased, occupied, or operated by the city-parish or any instrumentality or agency thereof, or any other political subdivision of the state, special district, authority, commission, or agency.

Restaurant means any coffee shop, cafeteria, luncheonette, sandwich stand, soda fountain, and any other commercial eating establishment, or part of any organization, club, boardinghouse, or guesthouse, which gives or offers for sale food to the public, guests, or patrons, whether food is customarily consumed on or off the premises, but not an

establishment whose primary purpose is to serve food to employees of a common employer.

Retail store means any place which in the regular course of business sells goods or services directly to the public.

Service line or waiting area means a queue, line or other formation of persons, whether seated or standing, in which one (1) or more persons are waiting for, providing or receiving service of any kind, whether or not such service involves an exchange of consideration.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

Sports arena means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller and ice skating rink, bowling alley and other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports, cultural or similar events.

Theater means any auditorium or building used for or designed for the primary purpose of exhibiting movies, stage drama, musical recital, dance, lecture, or other similar performance.

Tobacco business means an enterprise in which the primary activity is the sale, manufacture, or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental. For purposes of this definition, the term "primary activity" means more than fifty percent (50%) of gross sales or income.

Tobacco product means any product(s) that is used to consume tobacco or any product that contains any tobacco leaf, including, but not limited to, cigarettes, cigars, cigarillos, blunts, snuff, creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka, kretek, shisha, and roll-your-own cigarettes.

Tobacco retailer means any person, retail store, or other legal entity who knowingly sells, donates, distributes, or delivers to any person(s), whether or not any form of consideration is provided, tobacco products.

Vaping means the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

Sec. 12:601. - Construction of article.

(a) Nothing in this article shall be construed to permit smoking where it is otherwise prohibited by law or regulation.

(b) Nothing in this article shall be construed to preclude owners, operators, managers, employers or other persons having control of any establishment covered by this article

from prohibiting smoking in such establishment to a greater extent than is provided by this article, in accordance with applicable law.

(c) This article shall be liberally construed so as to further the general purposes stated in this article and the specific purposes of the particular provisions involved.

(d) If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Sec. 12:601.1 - Enforcement.

(a) 1. Any violation of this ordinance may be cited by any law enforcement officer by the issuance of a citation and summons to appear before a court of proper jurisdiction.

2. Such citation shall be in a form such that there shall be retained in each book of citations a receipt and each shall have a copy to be deposited by the law enforcement officer with a court having jurisdiction over the alleged offense.

3. Upon the deposit of the copy, the court shall notify the alleged violator of the time and place of his hearing or of his opportunity to plead guilty by the payment of his specified fine. Failure to appear, unless the fine is paid, may be punished within the discretion of the court as contempt of court.

(b) An owner, manager, operator, or employer of an area where smoking or vaping is prohibited under this article shall direct a person who is smoking or vaping in violation of this article to extinguish or turn off the product. If the person does not stop such use, the owner, manager, operator, or employer shall, if applicable, refuse service and shall immediately ask the person to leave the premises.

Sec. 12:601.2 - Violations and penalties.

(a) It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of premises in which smoking or vaping is prohibited pursuant this ordinance to fail to comply with the requirements of this ordinance.

(b) It shall be unlawful for any person to smoke or vape in any area where smoking or vaping is prohibited.

(c) Every person or business that violates subsection (a) of this section shall, may, for a first violation thereof, be liable for a fine of not more than \$500.00; for a second violation, both of which were committed within a period of 12 months, be liable for a fine of not more than \$700.00; and for a third or subsequent violation, all of which were committed within a period of 12 months, be liable for a fine of not more than \$900.00. Any person business that violates subsection (a) of this section five or more times within a twelve (12) month period shall be subject to a revocation of

the occupancy permit for the location in which the violations occur.

(d) Every person who violates subsection (b) of this section shall be liable for a fine of up to \$50.00 for each violation.

(e) Proceedings for violations of this article may be initiated by issuance of an affidavit or summons to appear before the Alcohol Beverage Control Board in Baton Rouge City Court or brought by the appropriate department or agency to administrative adjudication. When applicable, the court or hearing officer may order abatement of the conditions constituting the violation. If a person found liable for violating this article can demonstrate the inability to pay the penalty imposed, that person shall be ordered in lieu of the fine, to perform community service.

(f) The penalties provided by this section shall be in addition to any other penalty imposed by any other provision of law or regulation.

(g) In addition to the fines established by this section, violation of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

Sec. 12:602. - Prohibition of smoking in enclosed areas of public places.

(a) Except as otherwise provided by this Chapter, smoking and vaping are ~~is~~ prohibited in all enclosed areas in any Public Place as defined by this Ordinance.

(b) Except as otherwise provided by this Chapter, smoking and vaping are prohibited in all enclosed areas in any Place of Employment.

(c) Smoking is prohibited in the following public places, whether or not in an enclosed area:

(1) Within twenty-five (25) feet of the entrance or exit to any public building or public facility occupied or operated by the city-parish or any of its agencies.

(2) In any service line in a public place during the times in which the public is invited or permitted.

(3) Playgrounds and parks.

Sec. 12:603. - Areas where smoking or vaping is not regulated.

The following places shall not be subject to the smoking restrictions of this article:

(a) Private residences, except when a child care, day care, group home, or health care facility is operated therein, in which case smoking or vaping are prohibited.

(b) Motor vehicles, except when such vehicle is being used for the public transportation of children or a part of health care, group home, or day care transportation in which case smoking or vaping are prohibited.

(c) tobacco businesses.

(d) All places of employment of any manufacturer, importer, wholesaler, or distributor of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities.

(e) Cigar bars.

(f) Hookah bars.

(g) Outdoor seating, serving areas, balconies, patios, and unroofed courtyards of bars, restaurants, and casinos.

(h) Any electronic smoking device business including but not limited to retail, wholesale, and manufacturing facilities primarily engaged in sales of electronic smoking devices or their components.

(i) Convention facilities during the time such facilities are being used for professional meetings and trade shows which are not open to the public that are produced or organized by tobacco or electronic smoking device businesses or convenience store associations where tobacco products are displayed and limited to the location of such meetings or shows.

Sec. 12:603.1. - Sale or distribution of tobacco products near schools, churches, libraries, child care centers.

(a) No tobacco retailer shall be permitted to sell, donate, distribute, or deliver to any person(s), whether or not any form of consideration is provided, tobacco products within 300 feet of any park, church, public library, school, or any childcare facility or similar entity providing structured, organized care for youth.

(b) The 300-foot distance provided for in subsection (a) above shall be measured as a person walks, using the sidewalk, from the nearest point of the property line of the park, church, public library, school, or childcare facility or similar entity providing structured, organized care for youth, to the nearest point of the tobacco retailer.

(c) Any tobacco retailer lawfully operating such business prior to December 31, 2017 shall not be affected.

(c) If a tobacco retailer has an interruption of the continuity of business for a period in excess of six months, in order to reopen for business, the requirements set forth above must be complied with.

Sec. 12:604. - Posting of signs.

"Smoking" or "No Smoking" signs, or the international symbols indicating the same, and any other signs necessary to comply with the provisions of this article shall be prominently and conspicuously posted at all major entrances to, and appropriate locations within, each public or enclosed area where smoking is either prohibited, permitted or otherwise regulated by this article, by the owner, operator, manager or other person having control of such area."

Section 2. This ordinance shall become effective on June 1, 2018.

Section 3. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. All ordinances of parts of ordinances in conflict herewith are hereby repealed.